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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONNA CURLING, et al., )  
Plaintiffs, )

v. )

BRAD RAFFENSPERGER, et al., )  
Defendants. )

---

CIVIL ACTION FILE

NO. 1:17-cv-02989-AT

STATEMENT UNDER OATH  
JESSE EVANS

August 16, 2020



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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONNA CURLING, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL FILE ACTION
vs.	)	
	)	NO. 1:17-cv-02989-AT
	)	
BRAD RAFFENSPERGER, et al.,	)	
	)	
Defendants.	)	

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STATEMENT UNDER OATH

JESSE EVANS

August 16, 2020

2:15 p.m.

Via Zoom Videoconferencing

Reported by: Marsi Koehl, CCR-B-2424



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(Original exhibit attached to original transcript.)

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1 APPEARANCES OF COUNSEL

2 On behalf of the Plaintiffs:

3 BRUCE P. BROWN  
Attorney at Law  
4 BRUCE P. BROWN LAW, LLC  
1123 Zonolite Road  
5 Suite 6  
Atlanta, Georgia 30306  
6 (404) 881-0700  
bbrown@brucepbrownlaw.com  
7  
8

9 Also present:

10 Marilyn Marks, Coalition for Good Governance  
11 Jeanne Dufort, Coalition for Good Governance  
12  
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P R O C E E D I N G S

JESSE EVANS,

having been first duly sworn, was examined and  
testified as follows:

EXAMINATION

BY MR. BROWN:

Q. Please state your name for the record.

A. Jesse Evans.

Q. Mr. Evans, this is -- (audio faded).

A. You're cutting in and out, Bruce.

Q. Yeah, that static is not from me.

A. It's gone now.

Q. Jesse, can you hear me now?

A. Sure.

MR. BROWN: This will be a sworn  
statement pursuant to 28 USC § 1746.

BY MR. BROWN:

Q. Mr. Evans, although we're not in court and  
this is not a formal deposition with the opposing  
parties and other lawyers, you understand that you  
are sworn to tell the truth, the whole truth and  
nothing but the truth; correct?

A. Yes.

Q. And that the -- if you don't tell the truth,  
you're subject to perjury. Do you understand that?

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1 A. Sure. Yeah.

2 Q. I'm going to be -- this is awkward doing  
3 this by video. I'm going to do the best I can to ask  
4 questions that are clear. It's particularly  
5 important especially since there's no other party  
6 represented that your answers -- that you understand  
7 the question before answering, that you don't  
8 speculate, don't guess.

9 You can -- you can tell me you don't know it  
10 and tell me why you don't know it. It's just  
11 important that you're very comfortable with the  
12 accuracy of your testimony. And if you don't  
13 understand my question, please just have me reframe  
14 it. Okay?

15 A. Sure.

16 Q. What's your current position with elections?

17 A. Say it again.

18 Q. Are you involved in Athens-Clarke County  
19 elections?

20 A. Yes.

21 Q. What is your role?

22 A. I'm currently the chair of the County Board  
23 of Elections. Having said that, I'm not here  
24 representing the Board in any way, shape or form.  
25 I'm here representing myself as an individual.

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1 Q. As an individual, can you just tell me a  
2 little bit about yourself, your background and what  
3 you do?

4 A. You mean apart from the Board of Elections?

5 Q. That's correct.

6 A. I'm in my eighth year of teaching American  
7 government and civics in a local Title I public high  
8 school. I'm also the chair of, you know, a committee  
9 with GAE. I'm also chair of a local nonprofit that's  
10 focused on economic justice and voter registration  
11 and, you know, "get out the vote" efforts and  
12 elections integrity.

13 Q. What high school is it that you teach at?

14 A. Cedar Shoals High School.

15 Q. And where did you get your degree?

16 A. My undergraduate degree, two majors and  
17 three minors, at the University of Louisville. The  
18 majors were philosophy and psychology. The minors,  
19 political science, history and Latin-American  
20 studies.

21 My graduate degree and my teaching  
22 certification comes from the University of Georgia.  
23 I received by Masters of Art in teaching with a  
24 concentration in social studies education, 6th  
25 through 12th, specializing in political science.

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1 I also earned my reading endorsement while I  
2 was earning my certificate in teaching.

3 Q. And you have a newborn baby, I understand  
4 also?

5 A. I do. He's seven months, a little over.

6 Q. I congratulate you.

7 A. Thank you.

8 Q. How long have you been on the board of --  
9 Athens-Clarke County Board of Elections?

10 A. I was sworn in, in -- well, January of 2017,  
11 I believe. My term started January 2017.

12 Q. When you started, were you chairman?

13 A. No, no, no, no. Definitely not.

14 Q. When did you become chairman?

15 A. I became chairman like the beginning of my  
16 fourth year. My colleagues selected me to serve  
17 as -- the majority of my colleagues selected me to  
18 serve as chair in late January 2020 when the vote  
19 took place. And my first session as chair was in  
20 February of 2020.

21 Q. How are board members -- how do you get  
22 appointed to be a board member?

23 A. Well, there are five positions on the board.  
24 Three are nonpartisan positions and they are  
25 appointed by a local commission.

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1           Two of the positions are partisan. And the  
2 statute says -- the policy says something about, you  
3 know, whichever two -- yeah, whichever two parties  
4 has the majority of votes in a particular election  
5 cycle, that's who would determine -- you know, we're  
6 a two-party system in the United States. So that  
7 leaves the Republican and Democratic party as  
8 dominant -- the dominant party in the community right  
9 now.

10           So the local Republican party appointed one  
11 person and the local Democratic party appointed the  
12 other. And I'm not in a political party.

13           Q. So you're one of the nonpartisan appointees;  
14 is that correct?

15           A. That's correct. The mayor and commission  
16 had me go through an interview process and -- you  
17 know, with others. And they made the decision in  
18 late -- late 2016 and my term began January 2017.

19           Q. About how much time do you spend with your  
20 Board of Elections work just per month roughly?

21           A. Per month? That just depends on the month.  
22 I mean, if it's an election month, you know, there  
23 are several meetings around the time of the election,  
24 but also we -- you know, I've done like in June, I  
25 coordinated -- I designed, planned and coordinated

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1 like the delivery of all election equipment for  
2 Clarke County for that election. So that was a lot  
3 more time than I normally devote to the job.

4 I also, you know, do a lot of research with  
5 issues -- ongoing issues and speak to stakeholders  
6 between meetings and E-mail. And, you know, honestly  
7 it would be really hard for me to say, you know, a  
8 firm estimate.

9 I know our meetings tend to go -- usually  
10 our regular meetings go something like two or three  
11 hours. And, you know, sometimes we have a special  
12 meeting and it'll been a 30-minute meeting to an  
13 hour.

14 But I don't really -- I'd have to sit down  
15 and do the math to give you a firm estimate of  
16 something like that.

17 Q. It's a major commitment of time, obviously.

18 A. It definitely is a lot of time.

19 Q. Let me drill down a little bit on what you  
20 said. You were describing your work with the board.  
21 And you said that you were responsible for the  
22 delivery and the installation of all equipment or  
23 something to that effect.

24 Can you explain that in a little bit greater  
25 detail?

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1           A. Sure. When I was appointed or selected to  
2 be chair of the board, I was told by staff that the  
3 chairperson usually historically has had a huge -- a  
4 big role in ensuring that equipment is delivered to  
5 all the polling locations. So they were requesting  
6 my service for that.

7           And, you know, I said that's fine. And this  
8 particular year was more challenging than past years  
9 because this is the first year we've had our Dominion  
10 system, which is a lot more equipment. And we have  
11 24 polling locations.

12           And, basically, I created a tentative, sort  
13 of a living document, a standard operating  
14 procedure -- excuse me -- procedure for loading the  
15 truck to ensure we can get to at least three  
16 different precincts -- I'm sorry. We use 24-foot, I  
17 believe -- 24-foot moving trucks and a trail vehicle  
18 if we need to, like a moving van actually is what we  
19 used this past go-around as a trail vehicle.

20           And so I basically had to design -- I  
21 designed the layout. I loaded it with a -- another  
22 person, like I did like a practice run of loading the  
23 truck and getting it -- as much equipment on there as  
24 possible in a way that's like stable and safe and  
25 effective for loading -- for moving the equipment to

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1 each polling location. So I've got an SOP for that;  
2 I developed that.

3 And on the day I also coordinated with --  
4 over the phone and via phone calls, text and E-mail  
5 with like people who would be our point of contact at  
6 each location just to give them a heads-up that we're  
7 coming and to check in with them as a reminder and  
8 kind of get details about where our delivery  
9 personnel should go and, you know, what time of day  
10 and stuff like that.

11 And I also on the day -- so on the day of  
12 the moving -- the equipment moving, the load-out and  
13 getting it to the locations -- and, again, I  
14 coordinated the election day locations. I didn't  
15 coordinate advance voting. That's a less demanding  
16 task. There's less equipment for that and it's  
17 not -- because we delivered to all 24 polling  
18 locations in one day.

19 So on the day of moving we -- I sort of  
20 do -- I did a briefing in the morning with -- we've  
21 been using staff members from Athens-Clarke County  
22 Unified Government personnel, basically, for that.  
23 And I briefed them on routes.

24 I did a lot of planning and preparation for  
25 the routes. There were four different trucks,

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1 24-foot moving trucks and I coordinated routes for  
2 that. And I trained personnel on those routes.

3 I had maps prepared for them, myself and --  
4 with directions and everything. And I also had  
5 created a slide deck with aerial views of the  
6 locations, so they would be more familiar with where  
7 they were going and also had point of contact  
8 information for those people -- for the driving crew,  
9 the moving crew to use. And I had a communication  
10 protocol that I -- that I provided to them.

11 And then, you know, they used my SOP, my  
12 diagram and the pictures and stuff I took of the  
13 fully-loaded truck that I did with the practice run  
14 to help them deliver. Oh, and I also created --  
15 used -- created an inventory sheet with pictures of  
16 each thing, so people could know -- our personnel  
17 could know what they were looking at and how many  
18 they needed and stuff like that.

19 So we reviewed all that. And then during  
20 the day when they were loading out and leaving and  
21 stuff, they would text me that they were leaving.  
22 And they got -- one of the roles that I had assigned  
23 that they chose, they -- each team had a person that  
24 was supposed to be communicating with me throughout.

25 And so they would tell me when they were

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1 leaving, when they arrived. And I would give, you  
2 know -- I was basically communicating with delivery  
3 teams and with the point of contact at each location  
4 to let them -- give them a heads-up that the delivery  
5 team was on way. And I was also relaying information  
6 to staff, ACC Board of Elections staff, about  
7 progress.

8           You know, we had four different area  
9 managers and I was, you know -- and also there's one  
10 person, a staff person over the entire like  
11 facilities side of things, the elections side of  
12 things, the equipment side of things. So I was  
13 coordinating with her and the managers as well  
14 throughout that process just to make sure that  
15 everything went smoothly.

16           And everything did go smoothly. I was  
17 commended by staff. They had never seen anybody do  
18 it the way I did it. But it was very well-organized  
19 they said and it was very effective and they liked  
20 what I did.

21           Q. What election was that for?

22           A. June 2020.

23           Q. Do you have like a logistics background  
24 training?

25           A. I was a commissioned officer in the U.S.

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1 Army National Guard. Part of my training -- part of  
2 my role -- well, I mean, your job as an officer is to  
3 plan missions and to supervise and command those  
4 missions. And, you know, there's a lot that goes  
5 into it, the research and the reconnaissance and  
6 coordination and delegation of tasks.

7 But, yes, so I have -- I've planned and  
8 coordinated large movements of very expensive  
9 equipment, very sensitive equipment in the past.

10 Q. What were the dates of your service in the  
11 National Guard?

12 A. I honestly don't have that off the top of my  
13 head, but it was back in -- so it was 2011 to 2015,  
14 but I don't have the exact dates off the top of my  
15 head.

16 Q. I want to shift gears a little bit and turn  
17 your attention to ballot secrecy and the challenges  
18 of protecting ballot secrecy using the ballot marking  
19 device.

20 Are you with me, just the general topic?

21 A. Ballot secrecy?

22 Q. Yes. Did that issue come up in Athens  
23 during your tenure in the past -- in the past year?

24 A. It actually came up -- well, when you say in  
25 the "past year," do you mean this current calendar

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1 year or do you mean a year from now, like back.

2 Q. Back. Yes, this calendar year.

3 A. So just 2020 or 2020 all the way back to  
4 August 2019?

5 Q. When did it come up?

6 A. Late 2019.

7 Q. How did it come up?

8 A. People in the community reaching out about  
9 it. And there was concern already about -- from  
10 staff -- this is well before we had any equipment --  
11 that, you know, there was a lot more equipment. It  
12 was larger. And, you know, there was concern about,  
13 you know, storing it and also concern about fitting  
14 it all into the polling locations.

15 So we knew there was going to be -- it was  
16 going to be a challenge to get all this new equipment  
17 set up and then -- period, but also in a way that --  
18 well, ballot secrecy, there were people that reached  
19 out to us concerned about ballot secrecy. And I read  
20 in the media as well there were concerns about ballot  
21 secrecy in Georgia. And that kind of came from  
22 concerned community members and it came from the news  
23 media, really.

24 Q. How did the board approach the issue or how  
25 did you approach the issue? What did you do about it

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1 or not do about it?

2 A. And the issue you're saying is ballot  
3 secrecy -- maintaining ballot secrecy when utilizing  
4 the Dominion system?

5 Q. Exactly.

6 A. So after receiving information from, you  
7 know, community members and seeing it in the paper  
8 and also receiving information from, I believe, a  
9 nonprofit organization that's dedicated to elections  
10 integrity, we -- we ended up as a board adopting a  
11 back-up plan just in case we couldn't -- and the  
12 back-up plan wasn't just about ballot secrecy. It  
13 was about whether or not we'd be able to utilize the  
14 Dominion system, the new system coming in, like in a  
15 way that meets our legal obligations and serves --  
16 that would allow us to -- but also like practically  
17 speaking, physically speaking, could we use all the  
18 equipment that we've been asked to use?

19 So we need a plan B, what happens if there's  
20 something that goes wrong or we're not able to --  
21 because it took a long time for us to get our  
22 equipment. We didn't even get our equipment until --  
23 I believe it was February of 2020 when we got our  
24 equipment --

25 Q. Right.

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1 A. -- and we had a March primary coming up.

2 Q. Right.

3 A. So we adopted -- we actually adopted as our  
4 back-up plan -- we just, you know, did some research.  
5 And, again, there was media coverage of this.

6 We adopted Cobb County's pilot program that  
7 they utilized for hand-marked paper ballots. There  
8 was media coverage of that, like pilot success. And  
9 we wanted to have a back-up plan in place that would  
10 allow us to seamlessly transition to a back-up plan,  
11 something that was going to work and if for some  
12 reason we couldn't utilize the new electronic  
13 equipment that was coming in. So we adopted the Cobb  
14 County pilot program as our plan B.

15 Q. And then you adopted the Cobb County pilot  
16 plan as plan B. That was before you actually started  
17 installing the new equipment; is that right?

18 A. Oh, absolutely. We were -- there was a lot  
19 of uncertainty about the new equipment. We actually  
20 had just been told -- I believe it was at the same  
21 meeting, I believe. We were given an electrical  
22 survey, estimate or something. I forgot what they  
23 call it.

24 Basically, it was looking at our polling  
25 locations and looking at the demands that we had for

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1 electricity for this new system, like number of  
2 circuits and things of that nature and the number of  
3 machines that are required per polling locations,  
4 meeting the one-per-250 rule.

5 And we were told at that meeting, I  
6 believe -- I want to say it was late January at a  
7 special-called meeting that the -- 18 out of  
8 20 polling locations in Clarke County -- because we  
9 only had 20 at the time because we had some merge for  
10 construction reasons and other reasons.

11 But 18 out of the 20 at the time, we  
12 didn't -- did not have -- either didn't have current  
13 electrical capacity needed or they were unsure about  
14 it basically. So only two out of 20 election polling  
15 locations had been checked out and confirmed that  
16 they had electrical -- they met the electrical  
17 requirements of the new system. So that was a  
18 concern.

19 But also, you know, there had been  
20 complaints of -- in the media regarding ballot  
21 secrecy and complaints from community members who had  
22 seen the machines and had been concerned about the  
23 size of the screen and the angle of the screen and  
24 the size of the print and the lighting on the screen,  
25 basically, permitting people who were in the area --

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1 for many people to see somebody else's voting  
2 selections, which was a violation of ballot secrecy.

3 It was before we installed any equipment --  
4 and, actually, that led to us requesting -- you know,  
5 these concerns led to us requesting that our staff,  
6 our elections staff create a floor plan -- to-scale  
7 floor plan of each polling location that showed where  
8 each machine would go, meeting the one-per-250 rule  
9 but also the orientation of the machines as well. So  
10 we could have the -- the Board of Elections could  
11 have confidence that this is possible -- you know,  
12 that this was a possibility to set up all the  
13 equipment in ways that did not violate ballot  
14 secrecy.

15 Q. And so in coming up with the back-up plan in  
16 late January, after doing that planning, then what  
17 happened?

18 A. It was -- during the meeting when we adopted  
19 the plan -- the back-up plan, we received pushback  
20 from our director of elections, you know, for  
21 getting -- basically, it was clear that she didn't  
22 think that we should adopt it. She kept saying, We  
23 don't need to.

24 And the majority of the board didn't feel  
25 comfortable with what she was saying and given the

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1 facts that we knew at the time. And then actually  
2 after that, I followed up to ensure that we -- I  
3 needed to know how much -- like what equipment would  
4 be needed to implement plan B and how much of that  
5 equipment we had -- or materials we had on hand but  
6 also what we were lacking and when the purchase dates  
7 were.

8 And so I E-mailed our director of elections  
9 about that, cc'ing the board. And we ended up  
10 getting an estimate eventually regarding printing of  
11 ballots. And our elections director attempted to  
12 call a special meeting. Like normally -- so our  
13 bylaws say that the chair could call a special  
14 meeting as long as there's concurrence of two other  
15 board members, so we needed a quorum to do that.

16 But our director of elections actually tried  
17 to initiate her own special-called meeting. And in  
18 order to do that, she needed four members to vote yes  
19 to that.

20 And she was attempting to have us meet again  
21 and like it would seem it was to reconsider plan B  
22 that she had initially opposed to begin with. And  
23 the reason she said was because there's an estimate  
24 of money to be considered for printing the ballots  
25 and -- or the paper ballots.

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1           And there was frustration expressed by board  
2 members about this because the board had made a  
3 decision and it seemed as though the director of  
4 elections in Clarke County was persisting in trying  
5 to dissuade the board -- basically, persuade the  
6 board not to have a plan B in place and,  
7 specifically, not to use the Cobb County pilot  
8 program as plan B.

9           But after conferring with board members, it  
10 was -- we were under the impression that, you know,  
11 we don't really need another special meeting -- a  
12 special-called meeting for that. We voted to have a  
13 plan B in place and that's what we wanted.

14           And, you know, there were election expenses  
15 every election cycle that were never -- the director  
16 of elections had never requested that we approve, you  
17 know, a certain dollar amount for anything like that,  
18 to my knowledge and to other board members'  
19 knowledge. So it was pretty obvious she was  
20 insisting upon a special meeting then.

21           So I actually spoke with assistant manager  
22 Deborah Lonon who is the direct supervisor of  
23 Director of Elections Charlotte Sosebee, Clarke  
24 County and clarified the board's position on not  
25 needing another like meeting for this, that we had

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1 already made our decision.

2 This was after, you know, E-mail  
3 correspondence regarding this, after the board member  
4 who had proposed -- Mokah Johnson, after she had  
5 replied with -- to Director Sosebee's E-mail about  
6 this stuff and was expressing her frustration with  
7 Director Sosebee's sort of pushing back on the board  
8 and resisting doing what the board had decided to do.

9 And so, anyway, we spoke to Assistant  
10 Manager Deborah Lonon about it. And then it was made  
11 clear that we don't -- you know, so first of all,  
12 four members didn't vote for -- like to confirm the  
13 special meeting, but also there was E-mail  
14 communication about there not being any need for  
15 another meeting about that. And that was issued by  
16 Deborah Lonon, assistant manager.

17 Q. So plan B then was not at that point  
18 reconsidered by the board; is that right?

19 A. No. Because we had already made the  
20 decision that we needed a back-up plan. We had never  
21 used this equipment. There were plenty of concerns:  
22 electrical concerns, space concerns, secrecy  
23 concerns. You know, so we wanted to have a back-up  
24 plan to be sure that we could do our elections in  
25 Clarke County we had coming up.

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1 Q. And this was for the then-March primaries;  
2 correct?

3 A. Correct.

4 Q. And if my recollection is correct, the  
5 voting actually began on the March primaries before  
6 the pandemic suspended them; correct?

7 A. Could you restate that?

8 Q. The voting started in March on the March  
9 primaries; right?

10 A. We had advance voting.

11 Q. How many weeks of advance voting did you  
12 have?

13 A. Oh, gosh, this is why I needed to be able to  
14 look at my phone and get exact days. I want to say  
15 it was three, but I'd have to double check --

16 Q. Days or weeks?

17 A. Weeks.

18 Q. But how many actually -- how many days of  
19 voting occurred, just roughly, before the primary was  
20 postponed?

21 A. Well, that's, again, a good question because  
22 I'd have to check those dates as well. I can tell  
23 you that the week of the first Tuesday in March, so I  
24 guess March 3rd, I think, is when it was.

25 Can I look at my phone real quick --

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1 Q. Sure, sure.

2 A. -- and confirm these dates?

3 MR. BROWN: Sure.

4 (Brief pause.)

5 THE WITNESS: Yeah. So March 3rd was  
6 the day we had a regular meeting for Board  
7 of Elections. And the day prior to that was  
8 the first day of early voting.

9 So, you know -- and then I went to the  
10 Board of Elections' office, which was --  
11 that was the first day of early voting and  
12 that was the only site that was set up at  
13 that time for that week -- and just doing  
14 the normal Board of Elections stuff,  
15 checking out polling locations and saying  
16 "hi" to people, checking on the progress,  
17 the first time we'd used the Dominion  
18 system.

19 We had concerns about --

20 BY MR. BROWN:

21 Q. Let me interrupt you right there. I'm going  
22 to focus on some things.

23 So early voting started at one location on  
24 March 2nd; correct?

25 A. Yeah. At the downtown Board of Elections

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1 office.

2 Q. Were you using BMDs or did you invoke your  
3 back-up plan?

4 A. No. We tried to use the BMDs. We tried to  
5 use the electronic system. We received assurances  
6 from Director Sosebee that -- you know, multiple  
7 times. We would ask for like a diagram or a plan or  
8 something to show that the machines could be set --  
9 this new equipment could be set up in a way that  
10 would protect ballot secrecy and, you know, meet the  
11 one-per-250 rule and all that.

12 She had to -- like she said that we didn't  
13 need to have any sort of to-scale floor plans for  
14 early voting, that there would be no problems with  
15 that. She agreed, I want to say at the February  
16 meeting -- the February regular meeting -- she'd  
17 provide us --

18 (Reporter requests witness slow down.)

19 BY MR. BROWN:

20 Q. Let me ask you just -- if you could focus on  
21 my questions...(audio fades).

22 A. I can't hear you, Bruce.

23 Q. What I need to get from you, if you'll just  
24 sort of follow along, is just some of the structure  
25 of this. And if I want more detail, I'll ask you.

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1 Early voting started on March 2nd; correct?

2 A. Yes.

3 Q. You were using BMDs on March 2nd; right?

4 A. Yes.

5 Q. And, at some point, did you need to invoke  
6 plan B, in other words, using hand-marked ballots?

7 A. Yes. On March 3rd we did that.

8 Q. And then why did you do that on March 3rd?

9 A. Because -- well, for multiple reasons, one  
10 of which was when I visited the early voting location  
11 at the downtown office on March 2nd, I went and I was  
12 speaking with staff in the area where staff works  
13 behind the partition between public and staff.

14 And when I was talking to staff, one of the  
15 voting -- the BMD screens actually caught my eye on  
16 the right of me. You could see through the -- at the  
17 looking glass -- at the set partition glass that  
18 separates staff from public and you could see the  
19 screen, the BMD screen. And that's a violation of  
20 ballot secrecy.

21 And another reason was that on March 3rd  
22 when we met, we had been previously -- we had been  
23 promised in February, we were told by Director  
24 Sosebee that she would provide to us, have staff  
25 provide to us to-scale floor plans for all election

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1 day voting locations and that would actually be  
2 provided prior to March 3rd and that was never done.

3 And on March 3rd when we showed up, they  
4 didn't have to-scale floor plans showing that we  
5 could execute that election with all the equipment  
6 required meeting the one-per-250 rule and utilizing  
7 all the equipment while maintaining ballot secrecy.  
8 They just didn't, staff didn't provide that for the  
9 board.

10 And the board had lost confidence because we  
11 had been reassured repeatedly that we could do that.  
12 Specifically, we were told that they could accomplish  
13 that with advance voting at the downtown office. And  
14 then in the one instance where we -- the equipment  
15 had been set up and they said it was not a worry, not  
16 an issue, it was going to be protected -- ballot  
17 secrecy was going to be protected, it like didn't --  
18 it wasn't protected. It was violated. Well, the  
19 setup was violating ballot secrecy. People could  
20 just see the screen of the BMD.

21 Also that wasn't the only concern. The BMDs  
22 at the advance voting location, they had been set up  
23 side by side next to each other. And in order to get  
24 to the BMD that was furthest away, voters had to walk  
25 past the closest BMD to get to the next BMD. And you

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1 could see the screen as they were -- they could see  
2 the other voters' voting screens as they were walking  
3 past to get to their BMD. So the setup was not  
4 protecting ballot secrecy in that way either.

5 Q. So when you invoked plan B with respect to  
6 the early voting location, did you stop using the  
7 BMDs that were there and started using hand-marked  
8 paper ballots?

9 A. To my knowledge, at least one BMD was  
10 maintained like in use. But, yeah, they had switched  
11 over to -- to the paper ballots.

12 Q. How did the switchover to paper ballots go?  
13 Was that relatively easy?

14 A. To my knowledge, yes. I didn't hear  
15 complaints from the public about it as far as, you  
16 know, like them not liking using paper ballots. I  
17 didn't hear a lot of complaints about that.

18 I think that there was definitely, you know,  
19 concerns expressed from some members of the public  
20 prior to -- when the decision-making was being done  
21 at the March 3rd meeting, but that was not about the  
22 process of transitioning. That was just some people  
23 basically bothered about the board's decision.

24 There were some people speaking in favor of  
25 the board making the decision to switch to plan B and

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1 some people speaking against the decision to switch  
2 to plan B. But as far as executing plan B, I didn't  
3 hear really many complaints. The only complaint I  
4 heard was that sometimes staff or poll workers  
5 would -- when a voter would go in to turn in their --  
6 to scan their BMD -- or their ballot -- and this was  
7 happening with the BMDs, too, some poll workers  
8 were -- for some reason I was told some poll workers  
9 were asking voters to put it in face up instead of  
10 face down.

11 But that was a concern. We discussed the  
12 concern about that, the board members and I did. And  
13 to my knowledge, they stopped doing that at that  
14 location.

15 Q. Let me back up a little bit just to make  
16 sure that the record is clear.

17 You mentioned the one-to-250 rule a couple  
18 of times. You said one to 250. Is that the rule  
19 that requires at least one ballot station for every  
20 250 voters in particular precincts? Is that what  
21 you're referring to?

22 A. Yes. And that applies to election day not  
23 advance voting.

24 Q. Thank you. Okay. So moving forward a  
25 little bit, the voting for the March primary at some

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1 point then was suspended and the election day for the  
2 primary day was moved off a couple of times,  
3 actually; correct?

4 A. Yes.

5 Q. And then -- so you stopped the early voting  
6 in Athens. Then what happened with respect to the  
7 plan B?

8 A. I don't remember. Actually, it was prior to  
9 the -- prior to the voting for the March primary  
10 being pushed back but put on pause and pushed back  
11 due to the pandemic, we were actually -- the Georgia  
12 State Elections Board called an emergency hearing  
13 regarding our decision to utilize plan B for our  
14 community.

15 Q. The Board of Elections was challenging that  
16 decision; correct?

17 A. The State Elections Board did challenge our  
18 decision. They wanted -- they had a hearing. And  
19 the hearing was to -- it was regarding the decision.  
20 And all indications were that they were in  
21 opposition.

22 Q. Let me try to get back on track here then.  
23 So the sequence was that the secretary of  
24 state weighed in while the primary was still going  
25 on; correct?

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1 A. Yeah.

2 Q. And then what did you do? Did you change  
3 the way the voting was going on prior to the hearing  
4 or did you wait for the hearing or what did you do?

5 A. We relayed to them what we were doing and we  
6 wanted the State Elections Board to hear the  
7 reasoning and to hear from our attorneys that we  
8 hired regarding the practicability of utilizing the  
9 voting machines, the voting system to meet this  
10 one-per-250 rule and also meet the statutes -- the  
11 constitutional requirement and the federal and state  
12 requirements, statutory requirements that we protect  
13 absolute ballot secrecy; and also the requirement  
14 that the equipment -- voting equipment should be able  
15 to be monitored at all times, monitored by staff,  
16 poll workers at all times while in use.

17 So we -- you know, the three of us, the  
18 majority of us who voted on March 3rd for a plan B  
19 also, you know, wanted to make sure that our concerns  
20 and our case and our perspective was put forth with  
21 the elections board. And so we definitely didn't  
22 change like our decision prior to the hearing and we  
23 only did after the hearing because we were under  
24 threat of fines.

25 The hear -- the board -- the State Elections

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1 Board decided against our decision to enact plan B  
2 and to utilize plan B. And they, you know, issued  
3 a -- I want to say it was a \$2,500 fine, but also  
4 they issued their -- in their decision they said that  
5 it would be even more costly for us if we continued  
6 to utilize absentee ballots -- or, excuse me, the  
7 hand-marked paper ballots. So that very next day  
8 after that emergency hearing, the voters in our  
9 county were back to using the electronic ballot  
10 marking devices.

11 Q. And then did the Athens-Clarke County Board  
12 come up with a resolution or something as to how it  
13 was going to conduct the elections going forward  
14 after the Board of Elections hearing?

15 A. Yes. So during the process of preparation  
16 for the hearing, our attorneys received a concession  
17 from the secretary of state office's attorney. It  
18 was an interpretation of the one-per-250 rule that we  
19 had not been provided up to that point and,  
20 basically, saying that it was one voting booth per  
21 250 people rather than one ballot marking device for  
22 250 people.

23 So that was factored into a new board policy  
24 but also other things like best practices that had  
25 been observed in other counties, one incorporated

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1 into the new policies. And the policy was drafted by  
2 our attorneys who had represented us in this SEB  
3 emergency hearing and it was approved by the board on  
4 April 1st, 2020.

5 (Exhibit 1 marked for identification.)

6 BY MR. BROWN:

7 Q. Let me -- if you would look at what we have  
8 marked as Evans Exhibit 1, which is -- I'll represent  
9 to you is the document that you E-mailed to us  
10 shortly before your statement today.

11 Do you see that on the screen?

12 A. I do.

13 Q. This particular copy is not signed, but it  
14 was -- your recollection is that this was document  
15 that was signed by the board on or about April 1st,  
16 2020?

17 A. Yes. The only difference is that there was  
18 a typo on the top of page 3 that's no longer there.  
19 There was a typo on that day that we signed.

20 Q. And but the board should have the actual  
21 signed resolution; correct?

22 A. Yes.

23 Q. But just going through the substance of this  
24 resolution, let me sort of work backwards on this.

25 Is this the current up-to-date resolution

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1 that would govern the subject matter or has this in  
2 turn been revised?

3 A. There's been no revision.

4 Q. Did Athens-Clarke County when it set up for  
5 the June 11th and for the -- wait, the June 9th  
6 primary and then for the August 11 run-offs follow,  
7 basically, the procedures and policy that's set forth  
8 in Evans Exhibit 1?

9 A. I'm going to turn off my camera and pull up  
10 the document on my phone, so I can go down through it  
11 with you. Okay?

12 Q. Okay.

13 A. So staff training -- or poll worker training  
14 was provided leading up to the June 9th, 2020  
15 election. And I took part in one of those and I also  
16 sat in on another, like virtually.

17 And staff was actually -- they like  
18 mentioned the policy, but they didn't actually go  
19 through it line by line, you know. And they just  
20 said, We've provided this to you. And they sort  
21 of -- it was presented as an option, as a guide, not  
22 as "this is what should be done."

23 And I'll also say that, you know, throughout  
24 this whole process, there had been pushback from  
25 staff regarding the board taking action to ensure

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1 ballot secrecy like, for example, with the floor  
2 plans. I, you know, personally -- well, actually,  
3 during the SEB hearing, staff promised -- because  
4 during that SEB emergency hearing staff had still not  
5 provided us -- the board directly those -- the  
6 to-scale drawings. And the ones that they provided  
7 to our attorneys for the purposes of the hearing were  
8 like not sufficient. They did not show that one for  
9 250 and ballot secrecy rules were being met.

10 But it was said under sworn statement --  
11 sworn testimony by a staff member from ACC Board of  
12 Elections that they would have that to the board the  
13 following week and that never happened.

14 So there's been like a resistance to -- from  
15 staff on following through and doing what the board  
16 has asked staff to do regarding preservation of  
17 ballot secrecy.

18 I actually met with -- like staff asked me  
19 to meet with staff to help them like with the  
20 to-scale floor plans and with understanding what  
21 they should be -- people should be doing -- like poll  
22 workers should be doing to implement the policy that  
23 the board had adopted on April 1st.

24 Q. Let me interrupt you there just to sort of  
25 cut to the chase.

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1           On the June 9th election, did Athens-Clarke  
2 County have enough BMDs in the polling locations to  
3 meet the one-to-250 requirement?

4           A. I guess that depends on what you mean by did  
5 they have them in the polling locations. I  
6 personally observed in one of the polling locations  
7 that while the equipment had been dropped off, that  
8 there were actually fewer -- like some of the  
9 equipment was never taken out the case and it wasn't  
10 set up to be utilized by voters.

11           And also they didn't -- that poll manager  
12 hadn't put up any tables and voting booths for  
13 hand-marked paper ballots to make up the difference  
14 between the number of BMDs that were set up and the  
15 required number of voting booths for that station --  
16 polling location.

17           Q. Okay. So at least you can say that  
18 certainly not all of the polling locations had BMDs  
19 or ballot stations deployed sufficient to meet the  
20 one-to-250 requirement; correct?

21           A. That's correct. Only after I called  
22 Director Sosebee and spoke to her about it later that  
23 day -- after witnessing this, I called our director  
24 of elections and spoke to her about it. And I came  
25 back later that day and there were tables set up, you

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1 know, like -- basically, there were tables set up  
2 just to meet the one-to-250 rule, but they weren't  
3 being utilized. And they were like not in the voting  
4 area where voters were actually -- I mean, they were  
5 in the voting area, but they weren't -- it was clear  
6 they weren't actually intended to be used. It was  
7 just to meet the one-to-250 rule.

8 Q. If they had been used, it would have been  
9 for hand-marked paper ballots; right?

10 A. Correct.

11 Q. Now, in the polling locations was ballot  
12 secrecy preserved by the positioning of the ballot  
13 marking devices in an effective way?

14 A. Again, we had the problem where people were  
15 walking -- like people would walk behind voters in  
16 the voting booths to get to their voting booth and  
17 they could see the screen that way.

18 Also our policy that the board adopted said  
19 if there are polling machines side by side, they  
20 should have extended dividers to protect -- you know,  
21 to prevent people from being able to see the BMDs  
22 screens of other voters. And those were not put in  
23 place to protect ballot secrecy.

24 Q. We're talking about the June election right  
25 now, but I can probably expand it to other elections.

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1 In terms of based upon your experience --  
2 and you've had a lot of hands-on experience both as  
3 the chairman but also your experience of unloading  
4 this equipment and planning all the logistics -- is  
5 it feasible for Athens-Clarke County, given the  
6 polling locations that it has available, to both meet  
7 the one-and-250 requirement and use only BMDs  
8 throughout?

9 A. Umm...

10 Q. You mentioned some things that sound like  
11 problems in execution, right, like if you did it  
12 better, you might be able to do it. Okay?

13 But even if you did a good job with the  
14 screen separators, with the floor plans, if you did  
15 that, could you preserve ballot secrecy and match one  
16 BMD for every 250 electors into your existing polling  
17 locations?

18 A. From what I've seen, it would not -- like  
19 that would not be the case for all polling locations.  
20 And also I'd have to say like to this date -- to this  
21 date right now, when we're speaking right now, we  
22 have not -- the board has still not received like  
23 to-scale floor plans, like a finalized draft to show  
24 that we can do this. And staff has said --  
25 communicated that it's really hard to fit this many

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1 machines in there to begin with but also to do it  
2 while protecting ballot secrecy.

3           So we still don't have -- you know, months  
4 and months later -- what is it, six months later? Or  
5 five months later? Yeah, five months later. We  
6 still -- the board still has not been presented with  
7 a finalized copy of to-scale floor plans for all  
8 24 polling locations that show we can do one per 250  
9 with BMDs -- with all BMDs.

10           Q. Based upon your knowledge of the polling  
11 locations, is the problem that the staff is just not  
12 doing their homework or the homework cannot be done,  
13 if you know what I'm saying?

14           A. Honestly, it could be both. I know there  
15 definitely has been resistance from staff on just  
16 implementing this. But also like a poll manager had  
17 seen a draft of the floor plan and when I had shown  
18 up -- this is same poll manager, the same location,  
19 the one that had a lot of machines still in the  
20 suitcases, again, the carrying cases. That poll  
21 manager expressed to me like they did not feel like  
22 they could actually set up all that equipment  
23 according to that floor plan. They couldn't actually  
24 set it all up that way.

25           Q. Going back a little bit to just a broader

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1 question. Based upon your hands-on experience of  
2 loading the equipment, all the logistics involved in  
3 setting up the equipment, your efforts in trying to  
4 have your staff develop floor plans that attempted to  
5 protect privacy but also meet the numerosity  
6 requirement, the one-and-250 requirement -- based  
7 upon all that experience, what would -- why wouldn't  
8 you switch to hand-marked paper ballots?

9 A. I mean, at this point it's -- it's basically  
10 a result of the DEB hearing -- emergency hearing.  
11 Like we thought we were doing the right thing. We  
12 still felt we were doing the right thing back in  
13 March when we were attempting to protect ballot  
14 secrecy by using our back-up plan, but then -- and  
15 our attorney presented very compelling evidence. Our  
16 attorneys did a great job, made it very clear with  
17 photographic evidence, with like witness testimony,  
18 with -- you know, even with their way -- they did  
19 cross-examination of state's witnesses.

20 And at the end of the day, it didn't matter.  
21 It did not matter. The SEB was like -- they found  
22 against it. They said that we -- they didn't agree  
23 with the decision. And they issued a fine and it  
24 would be an even harsher fine or an even harsher  
25 penalty if we didn't switch over immediately back

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1 to --

2 Q. Let me do this and I'm -- the purpose of the  
3 question wasn't to assign blame for you not walking  
4 into a bunch of fines. That's not -- that wasn't the  
5 thrust of it.

6 But what I want to do is separate -- there  
7 are bureaucratic and legalistic reasons why you would  
8 not want to go directly to hand-marked paper ballots,  
9 specifically the Board of Elections is going to get  
10 punished by the State Elections Board. Are you with  
11 me?

12 A. Yes.

13 Q. I'm going to call those bureaucratic and  
14 punitive reasons for not switching from ballot  
15 marking devices to hand-marked paper ballots.

16 Are you with me?

17 A. Yes.

18 Q. Apart from those concerns, could the Board  
19 of Elections -- could Athens deploy hand-marked paper  
20 ballots and protect voter privacy, meet the  
21 logistical requirements of getting prepared to vote  
22 with hand-marked paper ballots?

23 A. So I asked a similar question of the staff,  
24 like I sent an E-mail requesting information about,  
25 you know, what if, you know, the secretary of

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1 state -- what if they decide that everyone's going to  
2 hand-marked paper ballots, could we handle that?  
3 Could we do that?

4 And the staff's response was, We'll do  
5 whatever is required of us to do. We'll figure out  
6 how to do it. Basically, it was yes. If that's what  
7 we were told to do, we would do it and we would  
8 manage it.

9 Q. Based upon your experience and your sort of  
10 working knowledge of the various ways of voting,  
11 would you have any particular concerns about  
12 switching to hand-marked paper ballots?

13 A. I mean, the only things -- for one, it would  
14 be a longer time to process the elections. That's  
15 not necessarily a reason not to do it. That's just  
16 an effect of switching over. Right?

17 Q. Right.

18 A. It would take longer to process those -- you  
19 know, that many paper ballots.

20 And, two, back in June we had about 16,000  
21 absentee -- paper absentee ballots sent in like by  
22 voters in our county. And one issue that came up was  
23 that our voter review panel actually discovered that  
24 there were marks being made by voters on these paper  
25 ballots but that the Dominion scanner -- or the

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1 scanner being used by the Dominion system that we  
2 were using to scan the ballots and the software we  
3 were using for adjudication -- the software we were  
4 using for adjudication wasn't counting marks that  
5 are to the human eye, to the voter review panel's  
6 eyes, were clearly votes cast -- like they meant to  
7 be cast.

8           They weren't counting all those if they were  
9 below a certain like bubble coverage threshold. The  
10 settings I believe were anything less than 12  
11 percent, it would not be counted as ambiguous. So it  
12 wouldn't be flagged to be seen by a voter review  
13 panel. But like it would just never be -- you know,  
14 it would just never have human eyes on it, basically,  
15 to see that it was a vote.

16           Q. Mr. Evans, I'm going to address that  
17 separate. Okay? That's another issue on the  
18 scanning thing that I want to talk to you about.

19           But just in terms of setting up the -- your  
20 polling places for election day, your staff said,  
21 Sure, you can switch to hand-marked paper ballots.  
22 It may take a little bit longer to process the  
23 hand-marked paper ballots.

24           And why is that? Don't the voters scan  
25 those just like they scan their BMD-generated

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1 ballots?

2 A. They -- so in my experience with the  
3 hand-marked paper ballots -- or you're saying like at  
4 the actual -- you're saying on the election day  
5 itself not using -- because I was referring to the  
6 processing of absentee by mail.

7 Q. No, no. I meant -- I'm talking about  
8 election day -- election day. And let's say for some  
9 reason you can't use BMDs. Are you with me?

10 A. Yeah.

11 Q. Would deploying hand-marked paper ballots  
12 instead of BMDs be relatively easy?

13 A. Yeah. I don't see why it wouldn't be.

14 "Yes" is the answer. I don't see why. We  
15 were doing it back in March and it was fine. So I  
16 don't know why it would be any different in November.

17 Q. And we talked about ballot secrecy and about  
18 one to 250 and about the power requirements and many  
19 people hiding behind the booth, all the different  
20 constraints that you have.

21 How does the need to socially distance  
22 voters and poll workers have an impact upon the  
23 feasibility of using the ballot marking devices?

24 A. You can only have a certain number of people  
25 in the room. There's a maximum of, I believe,

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1 10 people in the room and that's including poll  
2 workers.

3 So I think it was -- basically at the  
4 polling locations it was you're only allowed to have  
5 three or four voters come through at a time. And  
6 they are coming in in waves or in shifts or whatever.  
7 And they'd have to be spread out throughout the room  
8 as well.

9 And, you know, there's the sanitizing of the  
10 equipment before voters get in there. There's the  
11 sanitizing of the equipment after voters have used it  
12 between each wave of voters -- of three or four  
13 voters coming through. So it slows things down  
14 dramatically and it would lead to -- I mean, like in  
15 June it wasn't -- we didn't see long lines in June.  
16 But in November if this is still going on, it's going  
17 to be a much higher turnout. June was primaries  
18 mostly, but -- with some local stuff here, too. But,  
19 you know, in November it's going to be a much higher  
20 turnout.

21 So it would affect voting lines. It would  
22 affect how long people have to wait and how many  
23 votes are being done in one polling location at the  
24 time or in a day.

25 Q. Right. And would it speed things up to have

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1 hand-marked paper ballots?

2 A. Well, yeah, because you wouldn't have to  
3 sanitize the equipment.

4 Q. Right.

5 A. Also some counties -- I've heard of some  
6 places using like drive-through or drive-up voting  
7 like outdoor voting. We had a voter recently in  
8 Clarke County send me an E-mail asking me about are  
9 we going to be able to do -- could we possibly do  
10 voting outside in a covered space or something. But  
11 if we're using BMDs, like we'd have to have  
12 electrical capacity, electrical set-up. We'd have to  
13 have it done in a way that's going to protect the  
14 machines from the elements.

15 Q. Right.

16 A. But, you know, with paper ballots you don't  
17 run into that. You just have tables set up outside  
18 in a covered area and people would come and vote.  
19 You don't have all the electrical requirements.

20 So, yeah, you wouldn't have -- it's also new  
21 equipment. People have to get the card at the poll  
22 pad and then go use the card at the machine and  
23 scroll through and then print it out -- like once  
24 their done, hit "submit," print it out and then go  
25 over to the scanner and scan it in after --

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1 hopefully, after they've confirmed. Gone to our  
2 station where people can use magnifying glasses and  
3 confirm that what's on the paper is what selected in  
4 the machine.

5 So it's going to be fewer steps in the  
6 process and we have more options when it comes to  
7 voting outside and stuff if we went to paper as well.  
8 It would be faster, I think.

9 Q. Let me switch gears -- thank you for that.

10 Let me switch gears a little bit to just a  
11 very few questions on one issue.

12 And that is for absentee -- completed  
13 absentee ballots, somebody has completed their  
14 absentee ballot, doesn't want to put in the United  
15 States Postal Service for obvious reasons.

16 In Athens-Clarke County, where can they come  
17 drop it off if they don't want to use the mail?

18 A. We have five -- currently, we have five  
19 absentee ballot drop boxes that have been  
20 strategically set throughout our community -- set up  
21 throughout our community for ease of access. We  
22 dispersed them in various parts of town that we know  
23 that people have access to and they know where it is  
24 and it's, you know, closer -- we don't have it all  
25 centralized. It's all spread out so people can have

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1 access to it and it's closer to their home.

2 Q. Will you allow them to drop it off at  
3 polling locations --

4 A. No. No. That's -- we were told -- we've  
5 been told by staff that that's not something that  
6 we're doing. We're not -- and I'm not sure if  
7 that's -- I think -- I want to say it was the -- it's  
8 definitely the director saying this. It's on our  
9 website. Right now you can go check it out and see  
10 on our website that absentee ballots cannot be turned  
11 in at polling locations.

12 So we're not offering that right now. And,  
13 again, that was at the insistence of our elections  
14 director.

15 Q. Let me direct your attention to the scanning  
16 issue, the sensitivity of the scanning. You actually  
17 mentioned it when we were talking about the ballots.

18 Were you on the vote review board for this  
19 last election?

20 A. The August election?

21 Q. Yes.

22 A. Yes. I was.

23 Q. What is the vote review board just in  
24 general?

25 A. The vote review panel, it's a group of

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1 community members and -- that were, you know, either  
2 appointed by the board or, you know, there are some  
3 that are appointed by both local parties, the  
4 Republican Party and the Democratic Party locally.  
5 There's a couple that are appointed by a judge.  
6 However, this last time around it was just me  
7 representing the board and then a Democratic Party  
8 appointee and a Republican Party appointee. There  
9 were only three of us there.

10 And -- and the job is -- consists basically  
11 of, you know, if there's a ballot that's been  
12 duplicated, one piece of the job is to look at the  
13 duplications and make sure that the duplicate matches  
14 the intent of the voter on the original ballot. So  
15 that's part of it.

16 But the other piece of it is adjudicating  
17 ballots, you know, making sure that if the voter has  
18 made a mark on the ballot that -- and that mark can  
19 be, you know -- the vote review panel determines that  
20 that mark is actually an intentional attempt at  
21 voting and the intent of the voter is clear, it can  
22 be discerned by the vote review panel, then than mark  
23 is accepted as a vote by that voter.

24 Q. Let me back up just a little bit.

25 (Audio fades) -- ballots duplicated?

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1           A. Sometimes there's damage to the ballot, the  
2 paper ballot. Sometimes it's, you know, because the  
3 way the voter marked the ballot like --

4           Q. Spilt coffee --

5           A. Say again?

6           Q. Somebody spilled coffee on it and it won't  
7 go through the scanner; that kind of thing?

8           A. Yeah. Basically, if it's going to be an  
9 issue with the scanner.

10          Q. Let me move into the adjudication of  
11 ballots.

12                   Now, who or what, I should say probably,  
13 decides what ballots are supposed to be adjudicated  
14 or need to be adjudicated?

15          A. Well, now under this new system it's a  
16 software that determines which ballots are to be  
17 adjudicated.

18          Q. And so it will give -- the software then  
19 will give who the vote -- or separate for the  
20 voter review panel to review a set of ballots that  
21 needs to be adjudicated; is that right?

22          A. Yeah. There are certain parameters that  
23 are -- like certain settings for the software, the  
24 adjudication software for this new system. And if  
25 there's -- I think there's seven or eight different

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1 criteria that could be checked, you know, could be  
2 implemented to kick ballots back to the vote review  
3 panel for adjudication. The state, apparently, I'm  
4 told by staff, only trained people to use four of  
5 those options even though it's possible to use the  
6 others.

7 And also it has to do with the amount of ink  
8 or the amount of coverage of the bubble. You know,  
9 if it's above -- if it was below -- if it's between  
10 12 percent and I want to say like 32 or 34, I forget  
11 the exact number -- maybe 30. Yeah, I forget. But  
12 it's 12 and 30 something percent -- that that would  
13 be counted not as a vote but as an ambiguous mark.  
14 If anything's over that upper limit of that ambiguous  
15 mark range, that would be counted as a vote.  
16 Anything less than that lower limit, the threshold,  
17 that would not be counted as a vote and would not be  
18 counted as ambiguous needing to be reviewed by the  
19 vote review panel. And also, basically, nobody -- no  
20 human eyes would ever necessarily be on that.

21 Q. If it's below, say, 12 percent, it gets  
22 rejected without any human intervention; correct?

23 A. It -- yeah. There's -- it's not counted as  
24 a vote. And there's no -- and it's not presented to  
25 human eyes, you know, to identify the intent -- to

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1 try to identify the intent of the voter.

2 Q. When a ballot gets into the -- I'll just say  
3 the adjudication queue, the batch that needs to be  
4 reviewed by the vote review panel.

5 The ballot will have many different races on  
6 it; correct?

7 A. It depends on the election but, yes. In  
8 June it did.

9 Q. And so --

10 A. In August it did not. It was a runoff.

11 Q. So if there's a single ambiguous vote on  
12 there, it would kicked out for adjudication, correct,  
13 or put aside for adjudication; right?

14 A. Ambiguous is one of the settings, yeah.  
15 Ambiguous and overvote.

16 Q. And overvote, right.

17 A. And there were two more settings that I can  
18 find and tell you what they, if you'd like.

19 MR. BROWN: Yeah. If you could do that  
20 quickly, that's be great.

21 THE REPORTER: Hey, Bruce, can we take a  
22 quick bathroom break?

23 MR. BROWN: Let's take a break right  
24 now.

25 (Recess from 3:31 p.m. to 3:43 p.m.)

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1 BY MR. BROWN:

2 Q. Mr. Evans, we're back on the record.

3 Have you seen floor plans that give you  
4 confidence that in light of the other constraints,  
5 including the requirement of one BMD for every  
6 250 voters or one ballot station for every 250  
7 voters, that voter privacy, that ballot secrecy can  
8 be protected without using hand-marked paper ballots  
9 at some or all of your polling locations?

10 A. I have not seen floor plans like you've just  
11 described.

12 Q. Thank you. Let's move on to -- go back to  
13 the vote review panel, which we were talking about  
14 right before we broke. And to get us back on track,  
15 you were describing four different -- you had said  
16 before that there were seven or eight criteria that  
17 could be used by the software -- the adjudication  
18 software, that the state uses four options and that  
19 two of the options were ambiguous votes, which were  
20 votes which were cast -- which votes had some -- I'm  
21 sorry, ballots that had some votes that were between  
22 12 percent and 33 percent. That's one category.

23 And then overvotes. We know what overvotes  
24 are. That's when someone votes for more than one  
25 person for the same race; correct?

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1 A. Yes. It's overvote and ambiguous mark.

2 Q. Okay.

3 A. And also the other two that were utilized in  
4 June and also in August in our county was the blank  
5 ballot and the write-in. Those four settings were  
6 utilized with the software.

7 The ones we did not use were blank contest,  
8 undervote and write-in for qualified candidates.

9 Q. What's write-in for qualified candidates?

10 A. Great question. That was never explained to  
11 us. It was just -- we were just told it was a  
12 write-in. "Qualified" was in parenthesis. But like  
13 we didn't use those.

14 Actually, in Georgia, blank contest and  
15 undervote are going to be actually the same. Like  
16 it's going to pull up the same contest because we  
17 don't have ranked voting in this state.

18 Q. So if somebody doesn't vote on a race, it  
19 just counts what it counts and you never see it?

20 A. To be more precise, if the software doesn't  
21 recognize a mark as a vote and the software doesn't  
22 recognize a mark as an ambiguous mark, then the vote  
23 review panel -- it's not flagged for adjudication by  
24 the vote review panel.

25 However, our vote review panel back in June

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1 when looking at the ballots that were -- did have at  
2 least one contest flagged for adjudication noticed  
3 that there were other contests that were not flagged  
4 for adjudication but also had marks that were not  
5 counted as votes, but there was a mark there and it  
6 was -- the voter's intent was clear. And had they --  
7 you know, had they not seen that ballot due to the  
8 contest that was flagged for adjudication, then that  
9 would have never been seen.

10 Q. When you were doing the vote review panel  
11 work, did you see ballots that featured that  
12 combination of -- like one ambiguous vote that kicked  
13 it into ballot review board review but then also  
14 other marks that didn't counted at all?

15 A. So I -- so in August, there was only one  
16 race on the ballot.

17 Q. Okay.

18 A. So the answer would have to be no on that.

19 In June, members of the public could  
20 actually -- we had a glass window where people could  
21 actually look into the room -- the secured room where  
22 the voter review panel was doing adjudication. And I  
23 did see in June, you know, several -- you know,  
24 many -- like there were many ballots in which one  
25 contest on the ballot was flagged for adjudication,

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1 but there were other contests on the ballot that were  
2 not flagged for adjudication but also the mark that  
3 had been made on that was not counted as a vote and  
4 like -- but to the human eye, the voter's intent was  
5 very clear.

6 And, actually, our vote review panel then  
7 that I was not a part of back in June, they did  
8 account those marks as votes.

9 Q. Was any effort in June made to go back and  
10 review ballots that may have had some races that were  
11 not counted but that were not adjudicated because  
12 they did not trigger any of the software criteria for  
13 adjudication?

14 A. Yeah. Actually, members of the board that  
15 I'm on, the Board of Elections, we were thinking if  
16 we were missing anything less than 12 -- like marks  
17 less than 12 percent that were not on a ballot where  
18 anything was flagged for adjudication, if we're  
19 missing those marks and we have technological  
20 capability to change the settings on the software,  
21 the adjudication software to count undervotes and  
22 blank contests, then -- if we want to capture, if we  
23 want to know and go see and try to identify and  
24 hopefully count as a vote, if we're legally permitted  
25 to do, a mark on the ballot that wasn't picked up --

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1 marked as an ambiguous mark by the software and  
2 wasn't flagged -- or marked as a -- or counted as a  
3 vote, we could do it that way.

4 But when we asked our staff -- our director  
5 of elections if we could do that and we asked our  
6 attorney if we could do that, we were told by both  
7 that we were not allowed to do that, that we were not  
8 allowed to change the settings on the adjudication  
9 software to hopefully -- you know, and that way to  
10 find the votes that were not counted and not shown to  
11 the vote review panel.

12 Q. Has that issue been pursued further by the  
13 board or by the lawyers, if you know?

14 A. Yeah. Like interestingly and frustrating  
15 enough, we were advised -- we were told that earlier  
16 in -- so in June, that the week after the elections  
17 when we were coming in for -- like to do special  
18 called meetings and try to handle this issue, we were  
19 told early in the week that we couldn't do it. But  
20 then we find out later in the week that the county  
21 next door actually did do that.

22 And then on -- on the day that we were to  
23 certify the election -- scheduled to certify the  
24 election in June, one of our attorneys -- apparently  
25 the attorney that spoke to the secretary of state's

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1 office and spoke to their attorney then tells us, Oh,  
2 well, actually, by the way, yes, I did tell you this  
3 earlier this week, but, you know, between then and  
4 now I've spoken with them again and now they've  
5 backed off that statement saying that -- you know,  
6 like the idea that we're not permitted to change the  
7 settings on the adjudication software.

8 Q. So what's the current -- what's true now?  
9 Are you able --

10 A. That's a good question. We have asked -- so  
11 we asked again. We were going to try to include  
12 those things in August. We were going to try to  
13 include those settings to avoid that issue, just make  
14 sure we're not leaving -- like if a voter casts a  
15 vote in Clarke County, you know, it's cast. We can  
16 count it.

17 And we were told again by our attorney  
18 that -- by one of our attorneys that we can't do  
19 that, it would be in violation of, you know, laws  
20 and -- certain laws.

21 Q. At the county level, the county does not  
22 have the discretion to change either the criteria for  
23 either ballot review panel -- vote review, panel  
24 review or the percentages that were deemed to be an  
25 ambiguous vote; is that right?

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1           A. Yeah. We've been told that we can't do  
2 either of those things. And then when I asked, Like  
3 would you show me -- and actually another board  
4 member asked, Would you show me where it's written  
5 that we can't do this?

6           The attorneys said, Well, I can't show you  
7 in statute because it's not written in statute. But  
8 I can say that, you know, the way laws are  
9 interpreted, you know, that were written -- this is  
10 implied, basically, is what the attorney said.

11           And then, you know, they said -- the  
12 attorneys told us that if we decided to do this, it  
13 would probably be challenged. We're setting  
14 ourselves up for another challenge from the State  
15 Elections Board.

16           Q. If they fine again --

17           A. Say it again. I'm sorry.

18           Q. With the threat that you'll get fined again.

19           A. Yeah, yeah, yeah. But also like, you know,  
20 we were told, Well -- you know, because after I  
21 pushed back and said, Didn't you tell us that you  
22 called back and they said that they backed off that?

23           And she said, Yes, you're right, I did say  
24 that. And then they said, Well, until we receive  
25 very clear directive and guidance from the State

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1 Elections Board that we can do this, I'm advising you  
2 not to do this. This was in a regular public meeting  
3 that they said this.

4 Q. So the default then is that you can't change  
5 either the criteria or the settings unless you're  
6 given affirmative authority to do so from the State  
7 Elections Board; correct?

8 A. That's what we're being advised by both our  
9 attorney and also by our director of elections.

10 And even further I would like to -- I want  
11 to know like if we can actually like -- okay, we  
12 can't go back and do this with VRP, right, voter  
13 review panel, but what we could do is create a new  
14 project in Dominion, right, and like set the settings  
15 to only like over -- sorry, undervote and blank  
16 contest. Right? And these are the settings that we  
17 didn't use last time, you know. And then we can have  
18 the adjudication software -- set those ballots from  
19 the previous election aside. Right? And we could go  
20 through visually.

21 And even though it's already done, we can at  
22 least have an idea of -- the election's already done,  
23 we can at least have an idea of what are we missing  
24 with this software? What -- how many votes -- marks  
25 that would have been votes, that should have been

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1 votes, how many are we actually missing?

2 So I brought that idea to my elections  
3 director and she said it would be illegal for us to  
4 do that. We don't have permission to do that.

5 Q. Not even to do like a mock run of it?

6 A. Yeah. Just to go back after the fact and  
7 look at the -- you know, what the software would give  
8 us even if it's not a part of the official  
9 adjudication process or it's not part of the official  
10 certification of elections process, we still -- like  
11 she said we can't do it period.

12 She hasn't pointed to any statute or rule  
13 that says that, but that's what she said to us --  
14 like to me we can't -- like that would be in  
15 violation of the law if we were to do that.

16 Q. I don't want to get into the sort of  
17 personal dynamics between the board and the elections  
18 director.

19 But let me just ask this. Can the board  
20 just say, Tough, do it?

21 A. Sure. We could. We could like make a  
22 decision and say, yes, we're going to do this. But  
23 with the way things have gone earlier this year  
24 with -- when we tried to protect the ballot secrecy  
25 by switching to plan B and the way the SEB handled it

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1 and the way our elections staff and our attorney here  
2 locally handled it, it doesn't -- you know, it's not  
3 likely to happen --

4 Q. So I take it --

5 A. -- as far as votes go. I don't know that  
6 we'd have -- I don't think we'd have the number of  
7 votes needed to do something like that.

8 Q. Is it fair to say that there's not a whole  
9 lot of curiosity from either your director of  
10 elections or the state board or the lawyers as to the  
11 impact these settings might have upon actually  
12 disenfranchising voters?

13 A. I've not seen -- like I've not seen evidence  
14 of that sort of curiosity from any of those parties.  
15 And I've seen our board try to figure this out and  
16 then I've seen our board get pushback from our local  
17 attorney and our local elections director.

18 Q. Does it seem like your local attorney and  
19 your elections director are sort of a proxy for the  
20 State Elections Board?

21 A. You know, honestly, I don't -- I couldn't  
22 say that about my local attorney, but there are times  
23 that I do wonder that about our elections director.  
24 She's employed by our local government, but many  
25 times throughout my tenure on the board, it seemed

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1 that --

2 Q. Let me move on to another somewhat related  
3 topic.

4 Now, the public is able to see the decisions  
5 that the review panel is making while they're making  
6 it? Are they like looking over your shoulder or  
7 looking across the room? How does that work?

8 A. The room that they're in are two entrances  
9 and one of those entrances opens up into a hallway.  
10 The other entrance opened up into our facility where  
11 we store machines and equipment and stuff.

12 But the hallway side, like the public can  
13 come down that hallway and there's actually like  
14 large glass window. And they can -- the public can  
15 view that through the glass.

16 Q. The policy of sort of the -- the policy and  
17 the culture is that's a good thing; right? They  
18 ought to be able to see what you're doing. Is that  
19 fair to say?

20 A. I'll say that the board is of that -- you  
21 know, the board -- like from what I've seen, the  
22 majority of the board is very much in favor of that.

23 And I can say -- I don't think that -- like  
24 there's been -- I haven't seen staff make an effort  
25 to obstruct that window or anything like that.

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1 Q. Let me take you back to the actual work that  
2 the voter review panel does.

3 It's sort of mechanically looking on a  
4 computer screen at different images of ballots that  
5 have been put in by the computer for the panel's  
6 review; correct? You're looking at a screen; right?

7 A. Yes. That's correct.

8 Q. And the three of you are looking at it and  
9 there's an ambiguous vote. Let's just say all three  
10 of you go, Oh, yeah, that clearly is a vote for  
11 Smith; right?

12 A. Mm-hmm.

13 Q. Then what happens?

14 A. Then the person -- the way it's worked so  
15 far is that we have a Dominion tech, like a person  
16 assigned to us to help us with this machinery and  
17 stuff. And so far it's been that that person clicks  
18 you know, the option in the -- the option in the  
19 computer system in the software to change that --  
20 like to make that ambiguous mark a vote that's  
21 counted.

22 Q. And that's it; right? That's a vote that's  
23 counted; right?

24 A. Yeah. And there's a second -- so every --  
25 every ballot that's scanned through has at the bottom

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1 there's an audit mark, which is like a summary of  
2 what the computer system sort of recognized and did  
3 with each race, each contest. And whenever the voter  
4 review panel, if they discover that there's a mark  
5 made on the ballot that wasn't counted as a vote but  
6 that should be counted as a vote, once they make that  
7 change, a second audit mark is added to the bottom of  
8 the ballot record.

9 Q. At the end of the day is there a paper trail  
10 to be able to determine what decisions and on what  
11 ballots the voter review panel made?

12 A. You mean like a report or something that can  
13 be generated?

14 Q. Yeah, or some audit trail.

15 A. So that's a good question. I -- in my  
16 experience when I've asked questions about, Can we  
17 pull up the ballots that were audited -- or, I'm  
18 sorry, that were adjudicated and changes made to them  
19 and stuff, I've been told by staff, no, that can't  
20 happen. Like we can look at the -- go back and  
21 manually review, right, and you can look at the audit  
22 marks. And if there's two audit marks, they were  
23 changed by the vote review panel, like the vote  
24 review panel made a change as far as how the system  
25 counted the vote or didn't count the vote.

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1 But, to my knowledge, there's not like a  
2 running log of the ballot at this precinct for this  
3 election. This was adjudicated by VRP.

4 Q. Hang on one second.

5 A. Now, they have the batches, like they have  
6 the queue and the system that they utilized. But as  
7 far as like saving that list somewhere, I don't know  
8 that that's -- I don't know.

9 Q. Has -- let me change topics entirely.

10 For both the June and the August elections,  
11 I believe you said -- I don't know if this was on the  
12 record -- but that you went to a number of different  
13 polling locations just to see how things were going.

14 A. For June I did. In August, we only had  
15 three polling locations.

16 Q. Were you able to assess the effectiveness of  
17 the electronic poll pads for their intended purpose  
18 just in general?

19 A. When I was visiting?

20 Q. Yes.

21 A. No.

22 Q. Have you had any -- have you observed  
23 problems with them or -- either firsthand or reports  
24 of problems?

25 A. Yes.

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1 Q. And what problems did you either see or were  
2 reported to you?

3 A. One person sent a message, an E-mail, I  
4 believe, recently in August saying that they had had  
5 issues with it, with the poll panel -- or the poll  
6 pad. And I can pull up the E-mail if you would like  
7 to recap what they said.

8 Q. That's all right. Just the gist of it.

9 A. Basically, the sensitivity of the signature,  
10 like tools -- you know, when they have to sign off on  
11 it. And also they said that the components, like the  
12 wiring, the ports and stuff were not optimal as far  
13 as, you know, maintaining the structural integrity of  
14 those things over time and preventing them from  
15 disconnected and things of that nature.

16 Q. In general, did it seem like they basically  
17 were working okay?

18 A. I didn't see -- I've not seen lot of  
19 complaints about our poll pads in Clarke County.

20 Q. Do you have any paper backup for the poll  
21 pads that you use, that the polling locations use?

22 A. To my knowledge, yes, they have paper backup  
23 but also there's a -- you know, if there's -- if the  
24 poll worker has a problem at the poll pad as far as  
25 like a voter not showing up on their poll pad but

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1 also not on their back-up list on paper, then they  
2 just call the Board of Elections office and have  
3 staff there look up the person in the system.

4 Q. And what system would they look -- what  
5 system would the Board of Elections person look into?

6 A. The system that has our official voter  
7 rolls.

8 Q. Are you familiar with the concern about the  
9 DREs -- I'm moving on to a different topic here --  
10 the DREs that were used in the Winterville polling  
11 location for the mid-term elections in 2018?

12 A. Say again. I'm sorry.

13 Q. Moving on to DREs -- and I'm referring to  
14 the 2018 election, the midterms. Are you aware of  
15 any concerns about the DREs that were used in the  
16 Winterville precinct?

17 A. Yes.

18 Q. What did you learn about that, those issues?

19 A. So I've seen media coverage of concerns  
20 about these machines at the Winterville train depot  
21 polling location in 2018 of the voting data on them  
22 being statistically anomalous in a way that is very,  
23 very unlikely statistically speaking.

24 Q. What, if anything, did you or the board do  
25 to secure the particular DREs that were used?

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1           A. We were -- when we found out about it, we  
2 put it on our next agenda. And we wanted to find out  
3 what was going on about it and actually like get to  
4 the bottom of this.

5           And we had been told that those machines  
6 were to be placed in quarantine and held. And we  
7 were basically given a directive -- like our staff  
8 was given a directive by the state -- secretary of  
9 state's office to put those machines aside.

10          Q. As far as you know, were those machines set  
11 aside?

12          A. I recently discovered that not all those  
13 machines were set aside. That was recently found out  
14 that not all of those machines were set out.

15          Q. How do you know? What did you -- how did  
16 you find --

17          A. There was a report that was created by staff  
18 that someone shared with me that said that two of  
19 them -- two of the machines, I believe, were actually  
20 like put in an area of our facility that's for  
21 equipment that needs to be repaired. And then they  
22 weren't actually stored with the quarantined  
23 machines; and also that those machines have -- when  
24 we sent -- when the state came and picked up all the  
25 DREs and stuff for the switchover to Dominion BMDs,

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1 that those machines, I believe, were collected and  
2 taken by the state.

3 And I'm told that it was an accident, you  
4 know, made by staff; that it wasn't -- you know, that  
5 the -- the paper that I saw said that it was the --  
6 the machines were set over there in that area of our  
7 facility -- storage facility for repair and that,  
8 basically, it was like an oversight, I believe, is  
9 what was claimed on the document.

10 Q. Let me just -- you're referencing a report  
11 by staff. That's the elections staff in Athens?

12 A. Yes. By one member of the elections staff.

13 Q. Who wrote the report?

14 A. Lisa McGlaum's name is on the report, I  
15 believe.

16 Q. Spell that name for me.

17 A. Lisa, L-I-S-A.

18 Q. Got that.

19 A. McGlaum, M-C-G-L-A-U-M.

20 Q. When was that report written?

21 A. I don't know, actually. I can look at the  
22 report and tell you.

23 Q. Sure.

24 A. Is that all right?

25 Q. Yeah. Or you can just send it to me.

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1           A. I've got it right here, but, I mean, I can  
2 share it with you, too, if that's something you would  
3 like.

4           Q. Why don't you just E-mail it to me?

5           A. Okay.

6           Q. So just to make sure I've got the overview  
7 here, there were a total of eight machines -- or  
8 seven or eight machines that were actually used in  
9 Winterville; is that right?

10          A. Yes.

11          Q. And two of the ones that were actually used  
12 in Winterville got accidentally joined with other  
13 DREs in the repair -- (audio fades) -- and then taken  
14 by the state when they did their big sweep; correct?

15          A. That's my understanding.

16          Q. Did that leave -- how many?

17          A. Just a second. I don't have like a PDF of  
18 that report, photos of that report that somebody sent  
19 me.

20          Q. Don't worry about that.

21          A. But I can tell you the date that's on the  
22 report, if you'd like, for when it was prepared.

23          Q. What's the date?

24          A. August 13th, 2020.

25          Q. With the exception of the two machines that

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1 were put in the wrong place, are you aware of any  
2 other security issues relating to the Winterville  
3 machines?

4 A. I'm sorry. Just a moment. I was reviewing  
5 the document just now to make sure that I've been  
6 clear on what it says.

7 MR. BROWN: Okay.

8 (Witness reviewing document.)

9 THE WITNESS: Yeah. Apparently, it was  
10 one machine, according to this report, one  
11 DRE that was not used. It was assigned to  
12 Winterville, but it wasn't used in November  
13 of 2018. And it was put in the hospital  
14 area of the warehouse, quote, unquote, where  
15 they set them up for equipment in need of  
16 repair. And then the other one was machine  
17 number two that was used on November 2018.

18 BY MR. BROWN:

19 Q. Okay. And then apart from that issue, were  
20 there any other security or custody issues relating  
21 to the other machines that were used in Winterville?

22 A. Could you clarify your question?

23 Q. I'm just trying to sort of wrap-up.

24 You mentioned that -- the problem with the  
25 two. Were there any other problems? Like were five

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1 of them hacked, for example? I just want to make  
2 sure I got the whole story.

3 A. To my knowledge, there -- there were eight.

4 Q. I just need to sort of finish up and make  
5 sure --

6 A. There were eight machines that I've seen  
7 personally that were in quarantine in the office --  
8 like in what used to be called the EMS room. I'm not  
9 sure what they call it now, now that we switched  
10 over. It's a secured room, but it's also in the  
11 office of Lisa McGlaum.

12 MR. BROWN: Let me do this. Let me talk  
13 with my clients for a couple of minutes.

14 And let's take a five-minute break and then  
15 we'll wind up with just a few questions.

16 Okay?

17 THE WITNESS: Okay.

18 MR. BROWN: Great. Thanks.

19 (Recess from 4:15 p.m. to 4:30 p.m.)

20 BY MR. BROWN:

21 Q. Mr. Evans, I want to go back to the topic of  
22 the -- (audio fades) -- software and the ballot  
23 review panel.

24 One issue --

25 A. Will you represent that? I'm sorry.

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1 Q. Go back to -- make sure I have the word  
2 right.

3 What is the panel called that reviews the  
4 ambiguous votes?

5 A. The vote review panel.

6 Q. The vote review panel, when it was doing its  
7 work, it was looking at the images on a computer  
8 screen; correct?

9 A. Yes.

10 Q. So when you were looking at voter intent,  
11 you weren't looking at an actual physical ballot that  
12 was cast; were you?

13 A. Correct. We were not. The vote review  
14 panel was not looking at a physical like paper  
15 ballot. That's the one that was actually physically  
16 marked on. It was looking at scanned images.

17 Q. Let me direct your attention to the issue we  
18 talked about some and that was the concern about  
19 votes that weren't counted.

20 I believe it was your testimony that you had  
21 concerns about the ballots that weren't flagged by  
22 the adjudication software that might have on them  
23 what you saw were uncounted votes on ballots that the  
24 adjudication software didn't flag for other reasons.

25 Do you follow me?

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1 A. Correct.

2 Q. Did you actually see on those ballots that  
3 were sent to you to adjudicate votes that should have  
4 been counted?

5 A. If you're referring to the August election,  
6 there was an ambiguous -- there was one ambiguous  
7 ballot that was adjudicated by the vote review panel  
8 in August. And that did have a mark on it that  
9 needed to be adjudicated and that was a vote. The  
10 vote review panel determined that that was actually a  
11 vote and counted it as a vote and --

12 Q. That was all --

13 A. I'm sorry?

14 Q. August was just one race, so you didn't have  
15 the -- that fact pattern come up; right?

16 A. Right. But in June I was able to observe --  
17 I was not on the vote review panel in June. We had a  
18 different person doing that on behalf of the board.  
19 It was a different board member.

20 However, I was able to observe through the  
21 looking glass -- the window. And I saw many ballots  
22 that were like that, that were -- the adjudication  
23 software had flagged it, the ballot for the VRP to  
24 look at based upon the parameters that were in place  
25 for at least one contest.

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1           However, there were other contests that were  
2 not flagged for adjudication but the vote review  
3 panel like was doing due diligence and looking at the  
4 entire ballot front and back. And it noticed that  
5 there were voter marks that were not counted as a  
6 vote but also were not flagged for adjudication.

7           Q. That must have meant that they fell beneath  
8 the 12 percent threshold?

9           A. Yes. Assuming that the software did what it  
10 was programmed to do.

11          Q. If the software did what it was programmed  
12 to do, at 12 percent the software is not catching  
13 what were clearly intended to be votes for particular  
14 races; correct?

15          A. Well, anything below the lower threshold,  
16 they are not catching those.

17          Q. Right. But what I'm saying is you saw  
18 markings that were clearly votes --

19          A. Yes.

20          Q. -- and it was not catching at 12 percent;  
21 correct?

22          A. Yes. Yes. And that had not been counted as  
23 votes. And that happened many times.

24               MR. BROWN: Okay. I think that's all I  
25 have.

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1           So did you want to add anything or -- I  
2           appreciate you extra time today. I really  
3           do on a Sunday.

4           THE WITNESS: No. I don't think I have  
5           anything else to add.

6           MR. BROWN: Let's go off the record  
7           then.

8           (Proceeding concluded at 4:35 p.m.)

9           (Signature reserved.)

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CERTIFICATE


STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This the 31st day of August, 2020.



Marsi Koehl, CCR-B-2424



\*\*\*\*\* C E R T I F I E D \*\*\*\*\*



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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONNA CURLING, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL FILE ACTION
vs.	)	
	)	NO. 1:17-cv-02989-AT
	)	
BRAD RAFFENSPERGER, et al.,	)	
	)	
Defendants.	)	

The preceding statement under oath taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the statement under oath be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Witness will read and sign the transcript of said statement under oath.

\*\*\*\*\* C E R T I F I E D \*\*\*\*\*

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Raffensperger

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JESSE EVANS

8/16/2020

CERTIFICATE

STATE OF  
COUNTY/CITY OF

Before me, this day, personally appeared, JESSE EVANS, who, being duly sworn, states that the foregoing transcript of his statement under oath, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said statement under oath.

\_\_\_\_\_  
JESSE EVANS

SUBSCRIBED and SWORN to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2020 in the  
jurisdiction aforesaid.

\_\_\_\_\_  
My Commission Expires Notary Public

☐ No changes made to the Errata Sheet; therefore, I  
am returning only this signed notarized certificate.

☐ I am returning this signed, notarized certificate  
and Errata Sheet with changes noted.

\*\*\*\*\* C E R T I F I E D \*\*\*\*\*

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1 STATEMENT UNDER OATH ERRATA SHEET

2 Deponent: JESSE EVANS

3 Date: August 16, 2020

4 To Reporter:

5 I request that the following changes be entered upon  
6 the record for the reasons indicated. I have signed  
7 my name to the Errata Sheet and appropriate  
8 Certificate and authorize you to attach both to the  
9 original transcript.

10

11 Page No. Line No.

12 Change to:

13 Reason for Change:

14

15 Page No. Line No.

16 Change to:

17 Reason for Change:

18

19 Page No. Line No.

20 Change to:

21 Reason for Change:

22

23

24 Signature: Date:

25 JESSE EVANS

\*\*\*\*\* C E R T I F I E D \*\*\*\*\*

***NOW THEREFORE BE IT RESOLVED***, that the Athens-Clarke County Director of Elections and Voter Registration, the full-time staff and other employees and volunteers should to the maximum extent practicable implement the following policy regarding precinct layout:

1. Under O.C.G.A. § 21-2-367, the number of “voting booths or enclosures” required in each precinct on election day is to be computed as follows:

- Divide the number of active voters in that precinct as of the close of the registration period (usually 30 days before election day) by 250
- Round the result up to the nearest whole number

So, for example, a precinct with 251 active voters would require 2 voting booths.

2. The required number of “voting booths or enclosures” in a precinct can be satisfied by a combination of ballot-marking devices (BMDs) and voting booths or enclosures suitable for voting by paper ballot.

So, for example, a precinct that requires 10 “voting booths or enclosures” could have 4 BMDs and 6 places suitable for marking paper ballots.

3. A precinct should have no more BMDs than can be arranged in a manner that is consistent with the Secretary of State’s guidance on ensuring voter privacy (a copy of which is attached). If that number is less than the number of “voting booths or enclosures” required by law in that precinct, the remaining number should consist of paper-ballot voting booths.

4. In order to remain consistent with the Secretary of State’s guidance on ensuring voter privacy, BMDs should be arranged in accordance with the following principles.

a. Voters who are checking in, waiting in line, or using a magnifying station should not be able to see the screen of any BMD.

b. Poll workers should not be able to see the screen of any BMD except when necessary to assist a voter.

c. BMD screens should face the wall and should preferably be positioned back to back rather than side by side.

d. If BMDs are positioned side by side, there should be an extended privacy screen between them, as illustrated by the attached photo.

**EXHIBIT**

**1**



e. BMDs should be arranged so that no voter has to walk behind any other voter in order to get to a machine. Aisles of BMDs (see attached photo) are therefore strongly discouraged.

f. There should be no more than two BMDs on any banquet table.

5. A paper-ballot voting booth could be a table or a part of a table if appropriate screening is used to ensure voter privacy. See the attached photo. A provisional voting station counts as a “voting booth or enclosure” as long as it meets this guideline.

6. Paper ballots—and paper-ballot voting booths—should only be used in cases of emergency. Under the Georgia Administrative Code, examples of emergencies justifying the use of paper ballots include “power outages, malfunctions causing a sufficient number of electronic ballot markers to be unavailable for use, *or waiting times longer than 30 minutes.*” Ga. R. & R. 183-1-12-.11(2)(d).

All poll managers should be trained on the use of paper ballots in the case of an emergency and should be instructed to monitor the length of the lines. If, in the poll manager’s judgment, waiting times are longer than 30 minutes, paper ballots should be used (in addition to BMDs) until the emergency is resolved.

7. No number of voting booths is required during the early voting period. Accordingly, guidelines 1 and 2, above, do not apply. However, early voting locations should be arranged in a manner that is consistent with guidelines 3 and 4.

**AND BE IT FURTHER RESOLVED**, that the foregoing shall become and is the policy of the Athens-Clarke County Board of Elections and Registrations.

SO RESOLVED this 1<sup>st</sup> day of April, 2020.

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Jesse Evans, Chairperson

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Charles Knapper, Vice Chairperson

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Willa J. Fambrough, Secretary

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Patricia A. Till, Member

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Rocky Raffle, Member